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20. (Amended) The memory medium of claim 16, wherein said active device is a cellular telephone.

REMARKS

Claims 1-20 are pending in the application. Claims 1, 4-7, 11, 12 and 14-20 have been amended. Reconsideration of this application is respectfully requested.

Originally numbered claims 13-19 have been amended to conform to the numbering adopted by the Office Action. The dependencies of these claims have also been changed to reflect the renumbering. The dependencies of claims 4-6, 12 and 20 have also been changed to eliminate some intervening claims.

The Office Action rejects claims 1, 2, 7, 8 and 16-20 under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,950,128 to Ghisler, hereafter Ghisler.

This rejection is inapplicable because Ghisler lacks a feature recited in independent claims 1, 7 and 16, as amended. That feature is that the data is transmitted to an identified or located system for retransmission to the passive device. Ghisler's device identifies a location of a system 105 that has control over communications with active device 107. However, Ghisler's device does not transmit the data to the identified or located system 105 for retransmission to pager 108. Rather, Ghisler uses a paging system 106 to send a message to pager 108. In contrast, claims 1, 7 and 16 recite a method, computer or memory medium that requires that the data be transmitted to the located system for retransmission to the passive device. Ghisler lacks this feature, since Ghisler's data is transmitted not from the identified or located system 105, but rather from a different system 106.

For the reason set forth above, it is submitted that the rejection of claims 1, 2, 7, 8 and 16-20 under 35 U.S.C. 102(b) as anticipated Ghisler is erroneous and should be withdrawn.

The Office Action rejects claims 3-6 and 9-12 under 35 U.S.C 103(a) as unpatentable over Ghisler in view of U.S Patent No. 5,742,905 to Pepe et al., hereafter Pepe.

This rejection is inapplicable to these claims because their base claims 1 and 7, as amended, recite a feature that Ghisler's device lacks. That feature is that the data is transmitted to an identified or located system for retransmission to the passive device. Ghisler's device identifies a location of a system 105 that has control over communications with active device 107. However, Ghisler's device does not transmit the data to the identified or located system 105 for retransmission to pager 108. Rather, Ghisler uses a paging system 106 to send a message to pager 108. In contrast, claims 1, 7 and 16 recite a method, computer or memory medium that requires that the data be transmitted to the located system for retransmission to the passive device. Ghisler lacks this feature, since Ghisler's data is transmitted not from the identified or located system 105, but rather from a different system 106.

The Office Action acknowledges that Ghisler does not disclose passive devices as recited in claims 3 and 11. The Office Action cites Pepe as teaching the recited passive devices as listed in the passages at column 1, lines 11-36 and column 7, lines 4-21. The column 1 passage lists (lines 31-33) a pager, a cellular telephone and a personal digital assistant (PDA). Ghisler has a pager. A cellular telephone is an active device. A PDA can be either active or passive. The column 7 passage does not list any passive devices.

The Office Action concludes that it would be obvious to provide the teaching of Pepe into the system of Ghisler in order to enhance system

performance of increasing the answering probability of calls to mobile radio terminals. This conclusion is erroneous because none of the devices listed in Pepe would enhance the call answering probability of calls.

The Office Action suggestion to use the passive devices of Pepe in combination with Ghisler is improperly based on the hindsight of Applicants' disclosure. Such hindsight reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics Inc. v. Aerasonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

For the reasons set forth above, it is submitted that the rejection of claims 3-6 and 9-12 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

The Office Action rejects claims 13-15 under 35 U.S.C 103(a) as unpatentable over Ghisler in view of U.S Patent No. 6,100,806 to Gaukel, hereafter Gaukel.

The Office Action acknowledges that Ghisler does not disclose a transmitter capable of transmitting an identity message only a short distance. The Office Action cites Gaukel as teaching a passive device that is capable of transmitting an identity message only a short distance to an active device. The Office Action concludes that it would have been obvious to provide the teaching of Gaukel into the system of Ghisler to send the messages from the passive device to active device.

The Office Action cites for support Gaukel's Figures 3 and 7, but does not identify what devices in these Figures are regarded as passive or active. It is noted that cellular bag 30 has a cellular communication capability and, therefore, is regarded as an active device. On the other hand, wristband 20 has no cellular capability and, therefore, is assumed to be passive. Wristband 20 monitors various parameters of the wearer and provides the parameter data via a cable to cellular bag 30. Figure 7 merely discloses the specific monitoring devices of wristband 20. Wristband 20 does not have a transmitter and does not appear to send an identity message to cellular bag 30. Accordingly, Gaukel fails to teach a transmitter capable of transmitting an identity message only a short distance.

The Office Action suggestion to use any teaching of Gaukel in combination with Ghisler is improperly based on the hindsight of Applicants' disclosure. Such hindsight reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics Inc. v. Aerosonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

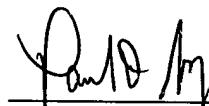
In this case, Gaukel's device is a system that tracks individuals who are under house arrest or are being monitored for medical conditions. On the other hand, Ghisler's device is for enhancing the answering probability of calls placed to a mobile telephone. There is no reason for one of ordinary skill in the art to use the monitoring teachings of Gaukel in Ghisler's mobile telephone system.

Attached hereto is a marked-up version of the changes made to the specification and claims by the present amendment. The attachment is captioned "Version With Markings To Show Changes Made."

It is respectfully requested for the reasons set forth above that the objection to the specification be withdrawn, that the rejections under 35 U.S.C. 112, 35 U.S.C. 102(b) and 35 U.S.C. 103(a) be withdrawn, that claims 1-20 be allowed and that this application be passed to issue.

Respectfully Submitted,

Date: 12/20/02



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Application, Serial No. 09/680,711

IN THE CLAIMS

Please amend the claims as follows:

1. (Amended) A method of providing data to a passive device comprising:
 - (a) identifying a location of a system that has control over communications of an active device associated with said passive device; and
 - (b) transmitting said data to said system for transmission to said passive device.
4. (Amended) The method of claim [3] 2, further comprising (d) identifying said passive device that is to receive said data, and wherein said identity of said passive device is used by step (c).
5. (Amended) The method of claim [3] 1, wherein said passive device is selected from the group consisting of: a watch, a pen, a telephone, a frame, a wallet, and a beeper.
6. (Amended) The method of claim [5] 1, wherein said active device is a cellular telephone.
7. (Amended) A computer comprising:
a processor, a memory and a communication interface;

first means for identifying a location of a system that has control over communications of an active device associated with a passive device; and

second means for transmitting said data to said system for transmission to said passive device.

11. (Amended) The computer of claim [8] 7, wherein said passive device is selected from the group consisting of: a watch, a pen, a telephone, a frame, a wallet, and a beeper.

12. (Amended) The computer of claim [11] 7, wherein said active device is a cellular telephone.

[13] 14. (Amended) The passive device of claim [12] 13, wherein said short distance is in a range of about zero foot to about 100 feet.

[14] 15. (Amended) The passive device of claim 13, wherein said personal article is selected from the group consisting of: a watch, a pen, a telephone, a frame, a wallet, and a beeper.

[15] 16. (Amended) A memory medium for a computer that controls the presentation of a data to a passive device, said memory medium comprising:

first means for controlling said computer to identify a location of a system that has control over communications of an active device associated with said passive device; and

second means for controlling said computer to present said data to said system for transmission to said passive device.

[16] 17. (Amended) The memory medium of claim [15] 16, further comprising third means for controlling said computer to identify said active device with which said passive device is associated, and wherein said identity of said active device is used by said third means.

[17] 18. (Amended) The memory medium of claim [16] 17, further comprising fourth means for controlling said computer to identify said passive device that is to receive said data, and wherein said identity of said passive device is used by said third means.

[18] 19. (Amended) The memory medium of claim 16, wherein said passive device is selected from the group consisting of: a watch, a pen, a telephone, a frame, a wallet, and a beeper.

[19] 20. (Amended) The memory medium of claim [18] 16, wherein said active device is a cellular telephone.